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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

April 19, 2001

AO-01-06

Revised: May 23, 2001

John J. Clarke
Director of Advocacy
Massachusetts Audubon Society
208 South Great Road
Lincoln, MA 01773

Re: Community Preservation Act

Dear Mr. Clarke:

This letter is in response to your letter asking for an advisory opinion. I apologize for the delay in responding.

You have stated that the Massachusetts Audubon Society (Audubon) would like to encourage municipalities within the Commonwealth to accept the Community Preservation Act, M.G.L. c. 44B (the Act) by adopting local community preservation programs. Audubon has joined with 32 other organizations to create the Community Preservation Coalition (the Coalition), which will also be working to promote implementation of the Act.

Background

In summarizing the Act, signed into law on September 14, 2000 (Chapter 267 of the Acts of 2000), you have stated that the Act was designed to establish reliable and adequate funds for acquiring, creating, and preserving open space, historical structures and landscapes, and affordable housing, by enabling cities and towns to levy a property tax surcharge (up to 3%) and receive state funds. State funds will be provided in an amount up to the amount raised by the municipality.

There are two methods for accepting the Act. Any municipality can vote to accept the Act by majority vote on a ballot question after approval by its legislative body (town meeting or city council). If the legislative body does not vote to accept the Act at least 90 days before a regular city or town election or 120 days before a state election, the question may be placed on the regular local or state ballot upon submission of a petition by 5% of the registered voters in a municipality.

The Coalition will help communities educate voters and will assist in efforts to pass community preservation programs. To achieve an overall goal of establishing preservation funds in 100 municipalities by July 2004, the Coalition will coordinate implementation strategies and fund-raising efforts, establish an information clearinghouse and web site, and undertake mass media education efforts. In addition, the Coalition will work with individual communities to assist in identifying critical preservation targets and in drafting community preservation programs.

Audubon will lead efforts focused on open space preservation and serve as a member of the Coalition's Executive Committee. Audubon, like other members of the Coalition, will provide programs, workshops and printed materials, will help supporters get the ballot question passed in various municipalities, and will respond to inquiries from interested citizens and groups. Finally, Audubon and other Coalition members will promote the Act to its staff and organization members, and will seek contributions from members, foundations, and others.

You have asked twenty-three specific questions on behalf of Audubon, the Coalition, and the member organizations within the Coalition. Each question relates to narrow aspects of broader issues. In this response, I have answered some of the specific questions where the questions are helpful in illustrating the response. I have not, however, attempted to set forth and answer each question in the form and order you have presented them, choosing instead to address the larger issues and to allow my answers to your individual questions to be subsumed in the resulting discussion.

Your questions, generally speaking, concern the reporting requirements for organizations that in part will be promoting passage of municipal ballot questions. In OCPF interpretive bulletin IB-90-02 (a copy is enclosed) the office defined when expenditures to influence ballot questions become subject to the campaign finance law. Advisory opinions or interpretive bulletins noted below or in IB-90-02 may be obtained from our Web site or by calling us for a copy.

I. Ballot question committees defined

A "ballot question committee" is an association, organization, or other group of persons that *raises* money or anything else of value for the purpose of favoring or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters . . ." See M.G.L. c. 55, § 1. Such a committee must organize and file campaign finance reports and is subject to certain limitations specified in the campaign finance law.

If a group of persons wants to start *raising money* for the purpose of distributing information to tell residents in a municipality generally about the Act, or to urge them to go to town meeting to support acceptance of the Act, they do not have to organize as a ballot question committee. If, however, the group raises money for the purpose of influencing a ballot question concerning acceptance of the Act by voters on a local ballot question, it must first organize with the local election official as a ballot question committee. All funds raised to influence a ballot question must be placed in a separate segregated fund distinct from other funds in the group's treasury. If the group wants to do a number of things, including generally educating people about the Act, influencing town meeting and *also* influencing the voters to support the ballot question, it must first organize as a ballot question committee before raising any money for the latter purpose.

If Audubon or the Coalition were to solicit contributions *or pool resources of member organizations* for the purpose of supporting a ballot question it would be operating as a political committee, would have to create a separate segregated fund for the committee, and would be required to organize and disclose its campaign finance activity as discussed in Part II of this opinion (even if the solicitations were to be sent to members only). See AO-98-21 (issued to Audubon). Audubon could, however, solicit contributions on behalf of an existing ballot question committee. In that instance, the contributions would need to be made payable to the ballot question committee – not Audubon. See AO-98-01 (corporation could solicit contributions as an agent of a PAC, but if the corporation solicited contributions made payable to the corporation and then deposited the checks prior to making expenditures to support or oppose candidates, the corporation would itself be operating as a political committee).

II. Disclosure requirements

If funds are solicited or pooled for general purposes related to the Act, *which do not relate to influencing an election in any particular city or town*, no disclosure is required at the time the funds are raised. If, however, the funds are raised or spent to influence a ballot question in a particular municipality, the activity must be disclosed. A ballot question committee must be formed and register with the local election official if funds will be raised specifically for the purpose of influencing a specific question on a ballot in a municipality.

In addition, the campaign finance law requires disclosure of all expenditures made or liabilities incurred by any “corporation, association, organization, or other group of persons” **other than** ballot question committees, made to promote or oppose a ballot question. A Form CPF M22 (“Report of Corporate or Association Treasurer”) must be filed when an association or organization makes such an expenditure in a municipal election. See M.G.L. c. 55, § 22. In accordance with this provision, Audubon may make *expenditures* to influence a municipal ballot question, if it discloses the expenditures with the city or town clerk. **Such expenditures do not require the formation of a ballot question committee because the expenditures are made using funds that were not raised for the purpose of favoring or opposing a ballot question.**

A ballot question committee must be established, however, to *solicit* contributions or pool resources of member organizations for the purpose of influencing voters. See enclosed *Campaign Finance Guide: Municipal Ballot Question Committees*, and Forms CPF M101BQ (Statement of Organization of a Ballot Question Committee) and CPF M102 (Campaign Finance Report).

The campaign finance law specifies where and when reports and statements must be filed. Reports and statements relating to a municipal ballot question must be filed with the local election official in the municipality where the ballot question will be on the ballot. See M.G.L. c. 55, § 24. The statute does not provide an exception or further guidance for organizations that make expenditures to influence a number of municipal elections. Therefore, statements and reports reflecting expenditures made to influence the numerous local ballot questions must be filed with the local election official of each city or town involved.

Ballot question committees must file campaign finance reports with municipal clerks on the eighth day before the election complete as of the eighteenth day before the election. In addition, for a town election, reports must be filed on the thirtieth day following the election complete as of the twentieth day after the election. For a city election, a final report is due on the twentieth day of January in the following year complete as of the thirty-first day of December of the prior year. Finally, reports must be filed on January twentieth of each year, complete as of the preceding December 31st, if the ballot question committee is still in existence.¹ See M.G.L. c. 55, § 18.

A corporation, organization or other group making expenditures to promote or oppose a ballot question must file a Form CPF M22 with the local election official according to the same schedule that is applicable for ballot question committees. Year-end reports must be filed until all declared liabilities of such group have been discharged. See M.G.L. c. 55, § 22.

Regardless of the type of report filed, *all* expenditures or resources used to influence ballot questions must be disclosed. For example, if Audubon has a staff member help a local ballot question committee draft a flyer regarding a ballot question, Audubon must file a Form M22 with the town clerk disclosing the value of the staff member's time. Similarly, the ballot question committee that receives the services must report an in-kind contribution on its campaign finance report.

The disclosure obligation exists even if Audubon is involved, as you anticipate, with "hundreds" of municipalities. In addition, the obligation exists even if several organizations are similarly involved. There may be several ballot question committees organized to raise and spend money to influence a question, each of which would file a campaign finance report, and there may be several organizations that make expenditures for that purpose, each of which would file a Form M22.

In addition, as noted in IB-90-02, disclosure is required where an organization incurs liabilities or makes expenditures to support or oppose an anticipated ballot question. It is not necessary that the question be certified as on the ballot at the time the liability is incurred or the expenditure made.

You have asked the following questions specifically concerning filing requirements.

1. When Audubon files a Form M22 with a municipal election official, must it also file with OCPF?

No.

2. Must the Coalition also file with OCPF?

No. The Coalition, like Audubon, must file with local election officials when it incurs liabilities or makes expenditures to influence local elections.

¹ Ballot question committees may be organized only to promote or oppose a specific, identifiable question or questions. Once the question or questions are adopted or rejected, such committees must, after paying any outstanding liabilities, dissolve. See IB-90-02.

If the Coalition makes an expenditure to influence anticipated ballot questions in several unspecified municipalities, the Coalition should disclose the expenditure with OCPF. Such disclosure would be appropriate, for example, if the Coalition places an advertisement in a newspaper of general circulation advocating a vote in favor of adoption in each city or town and no specific municipality is mentioned in the advertisement.

3. Audubon has employees at more than 20 sites. Could Audubon, while making expenditures to influence ballot questions in a number of specific municipalities, simplify the reporting requirements by filing once with OCPF and not, therefore, have to file in each municipality in which we are active?

No. The campaign finance law is designed to ensure that residents in a particular municipality can go to their local election official to learn who is responsible for distributing materials intended to influence a local election, and to learn how such efforts were financed. Residents are not required to travel to OCPF to get this information.

4. May the Coalition file on behalf of all the member organizations once with OCPF and, therefore, save every member organization from having to file?

No. The Coalition, like its member organizations, would have to disclose its particular expenditures to influence ballot questions. Disclosure must be made with local election officials if an expenditure is made by any individual organization to influence an election in a particular municipality.

III. What triggers the obligation to file reports?

In IB-90-02 the office provided general guidance regarding whether expenditures like those described in your letter must be reported. In that bulletin,² we stated that

Ongoing activities for which corporations and associations make expenditures may involve issues which become the subject matter of an initiative, or other, petition. In determining whether the campaign finance law applies to these expenditures, the office will look to whether the primary purpose of an expenditure is to influence the vote on a ballot

question. This determination is made on very specific facts surrounding particular activities, taking into consideration such factors as the stated or perceived purpose, style, tenor and timing of the expenditures in question. If in doubt regarding whether a particular expenditure is reportable, the

² Other interpretive bulletins and memoranda of interest include IB-95-02 (political activity, organization, and dissolution of ballot question committees and civic organizations' involvement in ballot question campaigns) and M-98-04 (question and answer guide for corporations, associations, organizations and other groups making expenditures to influence ballot questions). M-98-04 might be particularly helpful to you and a copy is enclosed.

office would advise the [corporation or association] to disclose the expenditure.

Applying this standard to the implementation of the Act raises issues because implementation requires several steps -- including increasing public awareness, lobbying town meeting or the city council to accept the Act, and getting a ballot question passed by voters. The process is similar to the procedure by which communities may obtain Proposition 2 ½ overrides and debt exclusions. In the Proposition 2 ½ context, approval at town meeting of increased borrowing may be conditioned on a separate vote in favor of the question in an election. The campaign finance law does not regulate expenditures made to affect the deliberations at town meeting, nor does it regulate activities generally designed to educate the public or governmental bodies on matters of public policy, even if a ballot question is anticipated at some point in the future. The campaign finance law does, however, regulate expenditures made and liabilities incurred primarily to influence voters regarding a ballot question, even if also made to influence town meeting.

The office assesses whether an activity is within the scope of the campaign finance law by determining the *primary purpose* of the activity. See IB-91-01, in which the office advises that if a newsletter distributed to voters includes language such as “vote for” or “support” (“advocacy language”) together with “election” or “ballot question” the office would conclude that the flyer was primarily intended to influence the ballot question, even if it was distributed before an election was actually scheduled. Advocacy language in connection with references to an election or anticipated election would trigger the reporting requirements of the campaign finance law.

You have asked several questions concerning what actions create the obligation to file.

1. Does Form M22 have to be filed when a few citizens, or a citizens’ organization asks Audubon to supply general information?

No, if by “general information” you are referring to general information regarding the Act, including information on the process by which it can be accepted.

General information may be provided to a citizens’ organization regarding the process by which the Act may be accepted. If, however, Audubon (or the Coalition) were to distribute a more than incidental number of information sheets to a group working to support a ballot question, for the purpose of helping the group get a ballot question passed, a Form M22 should be filed by Audubon or the Coalition. Similarly, Audubon’s staff time or other administrative resources used to provide strategic advice on how to conduct a campaign to get a ballot question passed should also be disclosed.

2. Does Form M22 have to be filed when Audubon is asked by a citizens’ organization to write letters to its members asking them to support the Town Meeting article?

No. However, if given the timing and content of the letters it would appear that the letters are distributed primarily to influence an election, Audubon should file a Form M22.

Audubon could also write a single letter endorsing the ballot question, which could be copied and used by a citizens’ organization. The citizens’ organization could pay all costs associated with

copying and distributing the letter, and such copying and distribution costs, if made solely to communicate with members of the citizens' organization, would not be "expenditures" subject to the reporting requirements of the campaign finance law.

Similarly, because Audubon is a membership organization,³ its communications *only to Audubon's members and their families* regardless of content would not be "contributions" or "expenditures" that would have to be reported in accordance with section 22. See M.G.L. c. 55, § 1. Therefore, if Audubon sends a mailing only to its members, it does not have to report its expenditures made in connection with the mailing even if the mailing to members advocates a vote at an election. If Audubon were to solicit contributions, however, for the purpose of supporting a ballot question, it would then be operating as a ballot question committee. See AO-98-21.

Political committees, e.g., groups that not only make expenditures to influence ballot questions, but also *raise* funds for that purpose, can not be "membership organizations." See 970 CMR 2.02, which defines the term "membership organization."

3. Does Form M22 have to be filed when Audubon is asked by a citizens' organization or municipal officials for assistance with research or for drafting the ballot question?

No, expenditures for drafting the question prior to certification by the selectmen, city council or town meeting, do not have to be reported. See M-98-04.

4. May Audubon provide, upon request, sample warrant language for the local legislative body?

Yes, and there would be no reporting requirement.

5. May Audubon provide, upon request, sample ballot question language?

Yes, and there would be no reporting requirement.

6. May Audubon provide, upon request, information on what to research and how to determine the optimal program for any given municipality?

Yes, and there would be no reporting requirement.

³ The Coalition also appears to be a membership organization.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director